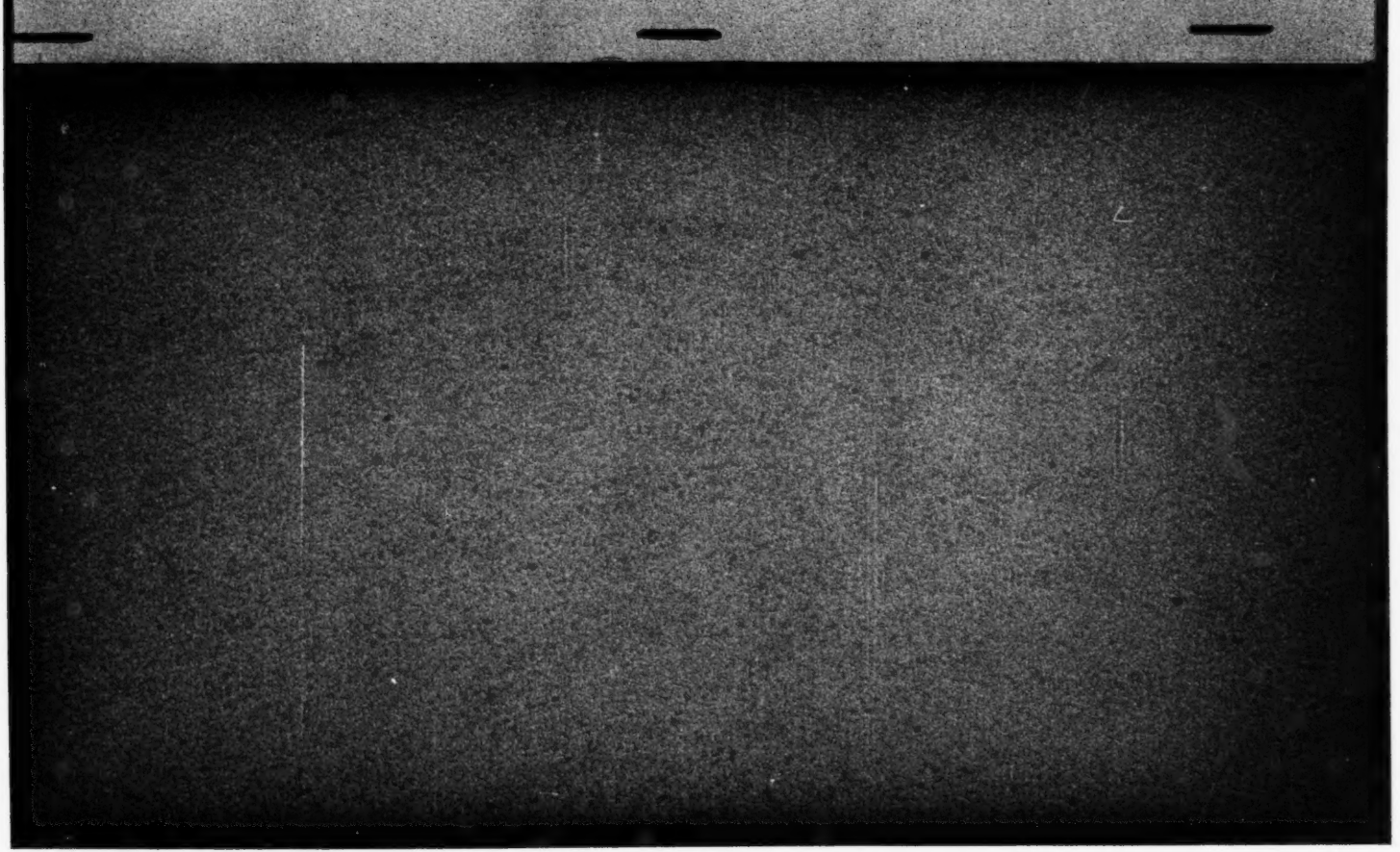


In The

SUPREME COURT OF THE UNITED STATES

JUN 27 1974
MICHAEL RODAK, JR., CLERK

October Term, 1974

No. 73-1429

D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and STELLA FERN LOWE,

Plaintiffs and Appellants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a corporation; GULF OIL CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; TEXACO, INC., a corporation; and UNITED STATES DEPARTMENT OF THE INTERIOR,

Defendants and Respondents.

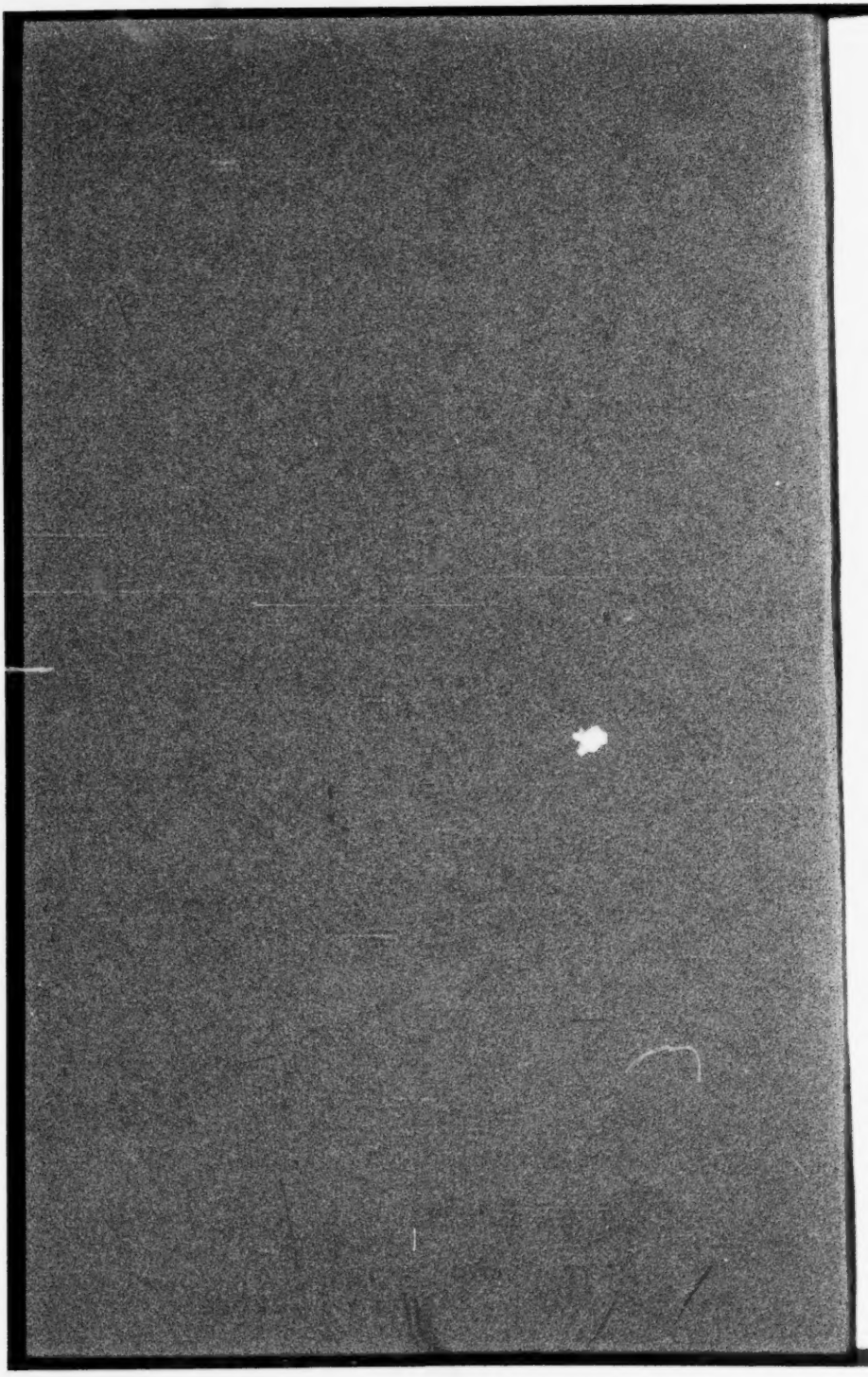
Petition for Rehearing of Order Denying Certiorari to The United States Court of Appeals for the Ninth Circuit

---

ROBERT E. KRAUSE
Counsel for
Petitioners.

Of Counsel.

WILLIAM C. BABCOCK
100 East Ocean Boulevard
Jergins Trust Building
Long Beach, California 90802



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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1974

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D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and STELLA FERN LOWE,

Petitioners,

vs.

UNION OIL COMPANY OF CALIFORNIA, a corporation; GULF OIL CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; TEXACO, INC., a corporation; and UNITED STATES DEPARTMENT OF THE INTERIOR,

Respondents.

To The Honorable, The Chief Justice and The Associate Justices of the Supreme Court of the United States:

This Petition for Rehearing of this Court's Order Denying Certiorari in the above entitled case on June 3, 1974 is authorized by Rule 58(b) and is based upon grounds which

are confined to intervening circumstances of substantial and controlling effect, as cited in the following authorities, not listed in Petitioners' Original Petition, and as hereinafter set forth:

Datta v. Staab, 343 P 2d 977, 983, 173 C.A. 2d 613 holds: "The term 'equal protection of the law' guaranteed by State and Federal constitutions, generally speaking, is that all persons under like circumstances shall be given protection and security in the enjoyment of personal and civil rights, the acquisition and enjoyment of property, the enforcement of contracts and the prevention of redress of wrongs, and that they shall be subject to similar taxes and penalties."

State v. Sixth Taxing Dist., 132 A. 561, 563, 104 Conn. 192 holds: "Within Const. Art. 1, Sec. 1 and 12, 'equal protection of the law' is accorded when all persons similarly situated are so protected in the rights of all. --------."

Harrison v. Caudle, 139 S.E. 842,

845, 141 S.C. 407 holds: "The 'equal protection' clause of Const. Art. 1 and 5, simply means that no person or class of persons shall be denied the protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances."

Lubin v. Panish, March 26, 1974, 39 L. Ed. 702, 94, S.Ct. No. 71-6852 (the same day herein Petitioners' Original Petition for Writ of Certiorari was filed with this Court,) held that: "A State may not, consistent with constitutional standards under the 'equal protection' clause, deprive an indigent candidate reasonable means of ballot access; and/or require from such candidate, filing fees that he is unable to pay, denying that person the right to file as a candidate, solely because of inability to pay a fixed fee, without providing any alternative means of access to the ballot."

Douglas, J., concurring in the Court's opinion, expressed the view

that under "equal protection" standards traditionally disfavoring wealth discriminations, the State's inability to condition the right to run for office dependent upon ability to pay mandatory fees, rendered the fee requirement unconstitutional.

C. A. Davis et al., Appellants, vs. Neal Nelson, State Director, Bureau of Land Management, No. 18661, March 13, 1964, 329 Federal Reporter, 2d, P. 840, held that: "Even if a claim of unconstitutionality is asserted against the administrative process, party must follow course of administrative procedure to finality before appealing to courts for relief."

Administrative Procedure Act, Sec. 1 et seq., 10, 5 U.S.C.A. Sec. 1001 et seq., 1009 and David Ray Rawls, Plaintiff, v. Secretary of the Interior et al, Defendants, No. 71-2845, Ninth Circuit Court, May 4, 1972, 460 Federal Reporter, 2d, P. 1200, held that: "Secretary of the Interior has responsibility

of determining the validity of mining claims on federal land." 30 U.S.C.A. 601 et seq.

U.S. v. City and County of San Francisco, Cal. 1940, 60 S. Ct. 749, 310 U.S. 16, 84 L. Ed. 1050, Rehearing denied 60 S. Ct. 1071, 310 U.S. 657, 84 L. Ed. 1420 held that: "Congress is in effect the trustee of public lands for all the people." (Not just a favored few.)

Standard Oil of Calif. v. U.S., C.C.A. Cal. 1939, 107 F 2d 402, Certiorari denied 60 S. Ct. 469, 309 U.S. 654, 84 L. Ed. 1003, Rehearing denied 60 S. Ct. 708, 309 U.S. 697, 84 L. Ed. 1036, Certiorari denied 60 S. Ct. 714, 309 U.S. 673, 84 L. Ed. 1019 held that: "The disposal of public land is not a subject over which the judicial power of the United States is extended, but is a field in which the authority of Congress is supreme."

If appeal court decision is allowed to stand and General Mining Laws are not applicable to the Outer Continental Shelf, then only one method for obtaining the oil and

gas on the Outer Continental Shelf is left, and no alternate method is provided. This is discriminatory procedure against all persons not having sufficient wealth to bid competitively against the massed wealth of combining oil companies.

Therefore, the Leasing Provisions of the Outer Continental Shelf are unconstitutional.

If, however, the General Mining Laws do apply to the Outer Continental Shelf, then the Outer Continental Shelf Lands Act is valid.

To exclude the application of the General Mining Laws from the Outer Continental Shelf, leaving the obtaining of petroleum resources on the Outer Continental Shelf solely to competitive bidding, draws an unconstitutional and discriminatory barrier between the rich and the poor.

Unless an alternate method of disposition of the petroleum oil and gas resources by General Mining Laws, such as

was extended to the Outer Continental Shelf by Sec. 1333, Title 43 U.S.C., (The Outer Continental Shelf Lands Act,) the portions of the said Outer Continental Shelf Lands Act applying to mineral leases are unconstitutional; since, by not providing some alternate method, the existing method constitutes wealth discrimination against United States citizens and denies and abridges their rights to equal protection and due process guaranteed by the Constitution of the United States; and by so doing, invalidates the mineral leasing portions of the Outer Continental Shelf Lands Act. The average citizen of the United States should not be required to possess great wealth to file and obtain mining claims on public mineral lands. Only a citizen having such financial resources could successfully bid in competition with the oil companies for oil leases on the Outer Continental Shelf.

Hence, the "wealth

discrimination" is a direct violation of a citizen's equal rights and privileges to file mining claims under the General Mining Laws on the Outer Continental Shelf.

It is our belief that when Congress extended to the Outer Continental Shelf the laws of the United States, which included the General Mining Laws, it acted judiciously and with earnest intent to extend said General Mining Laws to the Outer Continental Shelf; and further, that it was both intended and necessary in order that the mineral leasing portions of the Act become valid.

Neither has Congress seen fit to reserve the ownership of the petroleum oil and gas in the Outer Continental Shelf to mineral entry. Therefore, as lawfully-declared public land, the mineral resources therein contained are subject to appropriation and segregation under Sec. 22, Title 30, U.S.C.

That Congress extended the

General Mining Laws to the Outer Continental Shelf for the purpose of extending equal protection to all citizens of the United States is made clear by the language of the Act, Title 43, U.S.C., Sec. 1333 (a)(1).

JURISDICTION

As set forth in Petitioners' Original Petition, this action is by Plaintiffs against the above named Defendant Oil Companies on seven separate and distinct causes of action described in Plaintiffs' First Amended Complaint. (Cl. T., p. 124 to 152 inclusive, and exhibits attached.) On March 30, 1971, Plaintiffs filed written dismissals without prejudice as to the United States Department of Interior, thereby omitting the United States as a party to this proceeding.

Although overlooked in Petitioners' Original Petition, Congress has specifically granted jurisdiction to Plaintiffs and against the Defendants under Title 30, U.S.C.A., Section 53, which specifically provides:

"No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession."

Congress extended the General Mining Laws to the Outer Continental Shelf for the purpose of extending equal protection to all citizens of the United States under Title 43, U.S.C., Section 1333 (a)(1).

Reference is made to the jurisdictional question raised in the Petitioners' Original Petition, pages 12 to 16 inclusive. There now appears a clear and express conflict of decisions between the Ninth Circuit Court and The Supreme Court on the important question of Federal law concerning the exclusive jurisdiction of the power of the Secretary of the Interior, whose rights pre-empt the Court's authority to rule on

the validity of said mining claims without first having a determination made by the Secretary of the Interior at an administrative hearing for that purpose, duly noticed and held.

In Appendix B attached to the Appellants' Original Petition for this Writ of Certiorari, Appellants respectfully point out that the District Court decided this case on the single ground under Point 3, Page 2 of the decision that "since 1953, the Outer Continental Shelf Lands Act (43 U.S.C., Section 1331 et seq.) has provided the sole method by which oil and gas are to be disposed of on the Outer Continental Shelf." This decision was affirmed by the Ninth Circuit Court on November 15, 1973. To so hold violates the discrimination provision nereinabove described, and the due process clause described in detail under Point II, pages 16-31 of Petitioners' Original Petition, which is incorporated herein by reference.

The Mining Laws of 1872 and 1920 covering "After Acquired Federal Property" provide a procedure by which citizens of the United States may secure a vested property interest in the form of a claim on public lands having valuable minerals thereon.

Appellants have availed themselves of the above identified procedure and have fully complied in all respects with the Mining Laws of 1872 and 1920 in establishing certain claims on the Outer Continental Shelf.

Claims so established give to Appellant claimants a vested property right in the minerals on public lands, until such time as the claims are held to be void. The voidance of mining claims is the exclusive prerogative of the Secretary of the Interior, and can only be effected after an administrative hearing in which the claimant has an opportunity to present an argument establishing the validity of his claim or claims.

The Outer Continental Shelf Act is in direct conflict with the Mining Laws

of 1872 and 1920, and is unconstitutional in that the first mentioned Act provides for the United States, through the Secretary of the Interior, to lease land in the Outer Continental Shelf without first having an administrative hearing to determine whether mining claims on the leased land are valid or void.

Thus, the Outer Continental Shelf Leasing Act directs the Secretary of the Interior to carry out the leasing of land that is in direct conflict with the provisions of the Mining Laws of 1872 and 1920 on "After Acquired Federal property." Furthermore, there is a presumption that the mining claims when granted are valid, and that the claimants thereof are entitled to exclusive possession thereof even against the paramount title of the United States government thereto.

Under the above circumstances, the Respondent Oil Companies now extracting petroleum products from land covered by

Appellants' mining leases are trespassers; and will so remain until said claims are declared valid or void by an administrative hearing conducted by the Secretary of the Interior, at which time Appellants have an opportunity to be heard as provided by law. The Outer Continental Shelf Leasing Act is unconstitutional, in that it deprives Appellants of a valuable property right, without compensation. At the very least Appellants are entitled to damages for the previously described trespass from the date of initiation of the extraction of petroleum products from Appellants' mining claims until such date as said claims are held valid or void by an administrative hearing.

CONCLUSION

For the reasons set forth in this Petition for Rehearing, as well as in the Petition for Certiorari previously filed, Rehearing and Certiorari should now be granted; the decision of the Ninth Circuit Court should be reversed; and the case remanded for trial.

ROBERT E. KRAUSE

910 Jergins Trust Building
100 East Ocean Boulevard
Long Beach, California 90802

Attorney for Petitioners

CERTIFICATE OF COUNSEL

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of Rule 58.

ROBERT E. KRAUSE

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and STELLA FERN LOWE,

APPELLANTS,

vs.

UNION OIL COMPANY OF CALIFORNIA, a corporation; GULF OIL CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; TEXACO, INC., a corporation; and UNITED STATES DEPARTMENT OF THE INTERIOR,

APPELLEES.

Appeal from the United States District Court for the Central District of California.

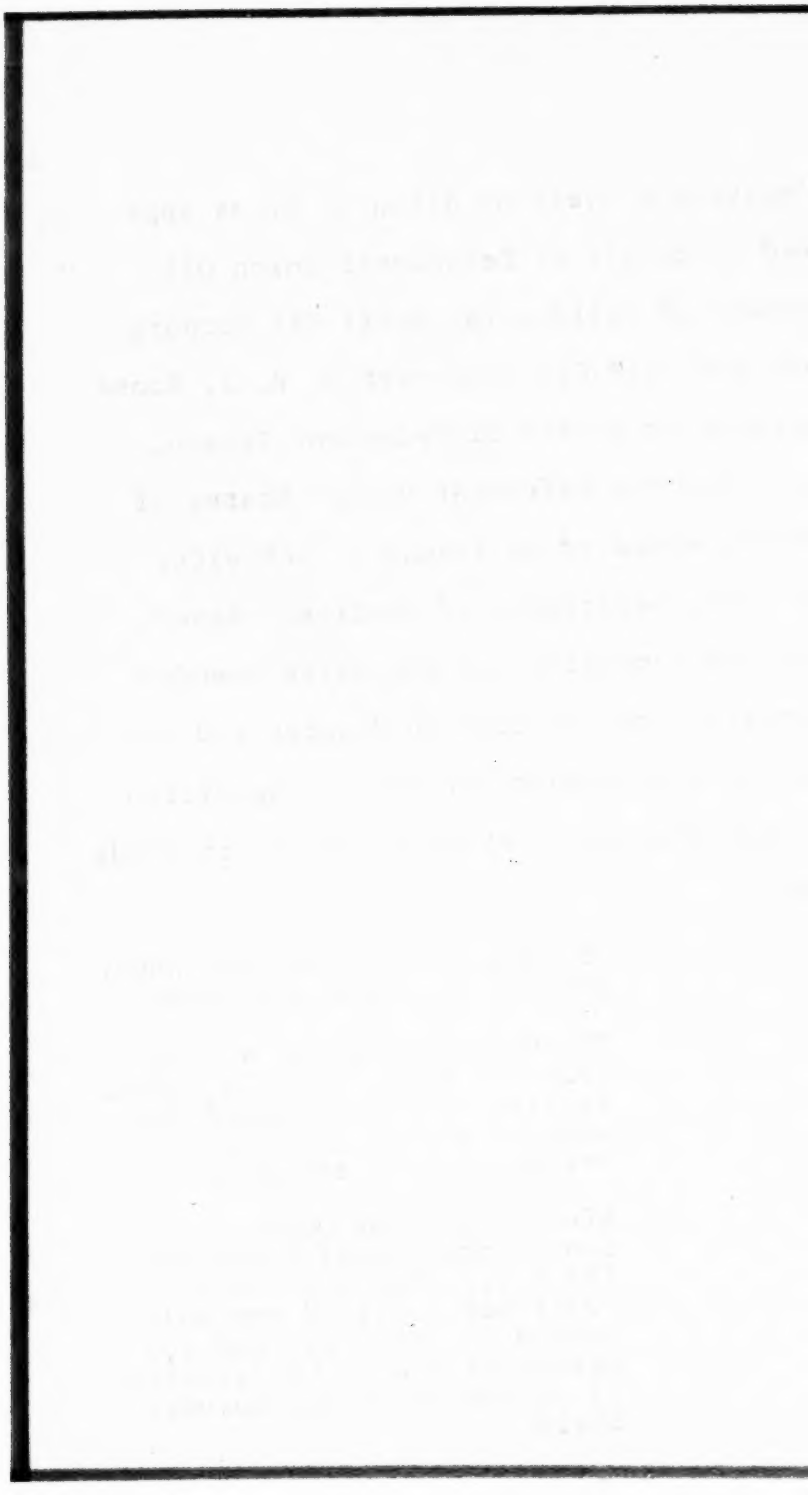
Defendants' motion to dismiss the within action came on regularly for hearing on November 30, 1971, at 1:30 o'clock P.M. before the Honorable Ray McNichols, Judge presiding. Robert E. Krause appeared on behalf of Plaintiffs,

O'Melveny & Myers by Allyn O. Kreps appeared on behalf of Defendants Union Oil Company of California, Mobil Oil Corporation and Gulf Oil Corporation, B. J. Roose appeared on behalf of Defendant Texaco, Inc., and the Defendant United States of America appeared by Thomas L. McKevitt, Attorney, Department of Justice. Based upon the complaint and the first amended complaint, the motions to dismiss and the memoranda in support of and in opposition to said motions to dismiss, the Court finds that:

1. The General Mining Laws never applied to submerged lands.

2. The Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. Section 193) superseded the General Mining Laws with respect to oil and gas.

3. Since 1953, the Outer Continental Shelf Lands Act (43 U.S.C. Sections 1334, 1337) has provided the sole method by which oil and gas resources are to be disposed of on the Outer Continental Shelf.



4. The United States of America (sued herein as the United States, Department of the Interior) is an indispensable party to the within action, and has not consented to be sued herein.

5. The United States, Department of the Interior, is not a suable entity.

Based upon that certain "Order Granting Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and for Failure to Join an Indispensable Party", and judgment dismissing the action entered in this Court by the Honorable Albert Lee Stephens, Jr., Judge, on December 17, 1969, in the case of Ratner v. Union Oil Company of California, et al, Civil No. 69-1538-ALS, and that certain "Order" of the United States Court of Appeals for the Ninth Circuit, filed on September 14, 1971, in case No. 25427, affirming the aforesaid order and judgment dismissing said action, the Court further

finds that:

1. The General Mining Laws never applied to submerged lands.

2. The Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. Section 193) superseded the General Mining Laws with respect to oil and gas.

3. Since 1953, the Outer Continental Shelf Lands Act (43 U.S.C. Section 1334, 1337) has provided the sole method by which oil and gas resources are to be disposed of on the Outer Continental Shelf.

4. The United States of America is an indispensable party to the within action.

5. This Court appears bound by the aforesaid Order in case No. 25427 (now final) affirming the order and judgment dismissing the action in case No. 69-1538-ALS.

NOW, THEREFORE, the Court being fully advised in the premises;

IT IS ORDERED that defendants' motion to dismiss the within action are granted.

DATED: January 6, 1972.

/s/ Ray McNichols
Judge, United States District Court

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and STELLA FERN LOWE,
Appellants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a corporation; GULF OIL CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; TEXACO, INC., a corporation; and UNITED STATES, DEPARTMENT OF THE INTERIOR,
Appellees.

No. 72-1538

[November 15, 1973]

Appeal from the United States District Court
for the Central District of California

Before: WRIGHT and GOODWIN, Circuit Judges, and EAST,* District Judge.

GOODWIN, Circuit Judge:

This appeal challenges the government's ownership of the fossil fuel deposits underlying the Outer Continental Shelf off the California coast.

Appellants sued the United States (Department of the Interior) and the four corporate appellees to quiet title, and demanded damages for trespass and conversion, for waste of private oil and gas resources, and for devaluation of mining locations.

Appellants base their claims upon their filing, in early 1968, of forty-one placer mining locations situated in Tract 402, Block

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*The Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

51, North, 65 West, as shown on the Official Outer Continental Shelf Leasing Map 68, of the Channel Islands Area. The district court dismissed the action, ruling that the complaint did not, either in its original or in its amended form, allege a valid claim to any interest in the subsoil or seabed of the Outer Continental Shelf of the United States.

The district court held that:

1. The General Mining Laws never applied to submerged lands.
2. The Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. § 193) superseded the General Mining Laws with respect to oil and gas.
3. Since 1953, the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1331 et seq.) has provided the sole method by which oil and gas resources are to be disposed of on the Outer Continental Shelf.
4. The United States of America (sued herein as the United States, Department of the Interior) is an indispensable party to the action, and has not consented to be sued herein.
5. The United States, Department of the Interior, is not a suable entity.

Because we dispose of this case on the district court's third ground, we do not reach the other issues.

Jurisdiction is founded on 28 U.S.C. § 1291 and 28 U.S.C. § 1346(f).[1] Governmental consent to suit is based upon 28 U.S.C. § 2409a(a).[2] For the purposes of this case we will accept the appellants' theory that the twelve-year statute of limitation[3] did

[1] "The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States." 28 U.S.C. § 1346(f) (Supp. 1972).

[2] "The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights * * *," 28 U.S.C. §2409a(a) (Supp. 1972).

[3] "Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C. § 2409a(f) (Supp. 1972).

not start running until they filed their so-called locations in 1968. Therefore, we need not decide whether the appellants' attempt to dismiss the United States from the suit was successful,[4] or alternatively whether the United States would be an indispensable party.

Appellants allege that their placer mining locations were filed pursuant to the General Mining Laws. The General Mining Laws, enacted in 1872 and substantially unchanged to the present, provide, in part:

> "Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase • • •." 30 U.S.C. § 22.

The Supreme Court has held that the "except as otherwise provided" clause is satisfied when there is another, more specific, statute which provides for the disposition of certain lands and the mineral deposits thereon. In *Oklahoma v. Texas*, 258 U.S. 574 (1921), the Court held:

> " • • • Only where the United States has indicated that the lands are held for disposal under the land laws does the section apply; and it never applies where the United States directs that the disposal be only under other laws." 258 U.S. at 600.

It is obvious that the United States has "otherwise provided" in connection with the Outer Continental Shelf. In 1953, Congress enacted the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq. That act, *inter alia*, asserted United States' ownership of and jurisdiction over minerals in and under the Outer Conti-

---

[4]Plaintiffs' original complaint was filed on February 2, 1971. By Stipulation dated March 15, 1971, plaintiffs were allowed to amend their complaint. On March 19, 1971, the United States moved to dismiss the cause of action and for summary judgment in response to the plaintiffs' original complaint. On March 24, 1971, the district court ordered plaintiffs' amended complaint to be filed retroactively as of March 15, 1971. On March 30, 1971, plaintiffs filed notices of dismissal as to the United States, Department of Interior. Subsequently the United States and all other defendants filed motions to dismiss the cause of action with prejudice or for summary judgment in answer to the plaintiffs' first amended complaint.

nental Shelf, extended the Constitution and laws of the United States to the shelf lands, and established an exclusive system of mineral leasing on the Outer Continental Shelf. The purpose of the Lands Act was to define a body of law applicable to the seabed of, subsoil of, and fixed structures on the Outer Continental Shelf. *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969).

The Lands Act specifically provided that "mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter." 43 U.S.C. § 1333(a)(1). Section 1331(c) defines the term "mineral lease" as "any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals • • •." Furthermore, § 1337 established a detailed bidding procedure pursuant to which the Secretary of the interior may grant leases. In light of these clear expressions of a congressional intent to provide an exclusive procedure for acquiring mineral interests in the Outer Continental Shelf, we hold that appellants' claims based upon their purported placer mining locations filed under the General Mining Laws are invalid.

Accordingly, the district court's dismissal of the complaint is affirmed.

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APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

D. ARTHUR LOWE, et al., Appellants,	)	
v.	)	No. 72-1538
UNION OIL COMPANY OF CALIFORNIA, a corporation, et al., Appellees.	)	FILED December 26, 1973 United States Court of Appeals

Appeal from the United States District Court for the Central District of California.

Before: WRIGHT and GOODWIN, Circuit Judges, and EAST,* District Judge.

ORDER

Appellants' petition for rehearing, filed December 10, 1973, is

DENIED.

*The Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

APPENDIX D

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D. C. 20543

June 3, 1974

Robert E. Krause, Esq.
910 Jergins Trust Bldg.
100 East Ocean Blvd.
Long Beach, Calif. 90802

RE: LOWE, ETC. v. UNION OIL CO. OF CALIFORNIA, ET AL., 73-1429

Dear Sir:

The Court today denied the petition for a writ of certiorari in the above-entitled case.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By
/s/ Helen Taylor
Helen Taylor, (Mrs.)
Assistant Clerk

cc to:

R. W. Curtis, Esq.

Randall B. Robinson, Esq.

AFFIDAVIT OF SERVICE BY MAIL

State of California)
) ss.
County of Los Angeles)

The undersigned, being first duly sworn, states: My business address is 100 East Ocean Boulevard, 910 Jergins Trust Building, Long Beach, California 90802. That I am a citizen of the United States, and over the age of 18 years employed in the County of Los Angeles, California, and not a party to this cause; on the 25th day of June, 1974, I served the within Appellants' Brief upon the persons named below by depositing three true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a mail box, sub-post office, substation, or mail chute (or other like facility) regularly maintained by the Government of the United States at 100 East Ocean Boulevard, in the City of Long Beach, California, addressed to the attor-

neys of record for said Appellees at the office address of said attorneys, as follows:

Rashkow, Robert L. Meyer & Frederick Brosio, Esquire
United States Courthouse
312 North Spring Street
Los Angeles, California 90012

B. J. Roose, Miles W. Newby, Jr., Esquire
3350 Wilshire Boulevard
Los Angeles, California 90010

Edward F. Bradley, Jr., Esquire
Assistant Attorney General
Department of Justice
Washington, D. C. 20530

O'Melveny & Myers, Esquire
611 West Sixth Street
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Richard W. Curtis and Donald R. Arnett, Esquire
1801 Avenue of the Stars
Los Angeles, California

Mr. George S. Schwartz
Marine Research Section
Justice Department
Washington, D. C. 20530

Betty J. Arnold
BETTY J. ARNOLD

Subscribed and sworn to before me this 24th day of June, 1974.

Robert E. Krause
ROBERT E. KRAUSE